91-1877

No.

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER 1991 TERM

THE COLORADO DEPARTMENT OF HIGHWAYS and THE COLORADO DIVISION OF HIGHWAYS, PHILLIP PACHECO, EARMAN PACHECO, MERLE ZIMER, PHILLIP WEST, ROSS HAMILTON, EDWARD FINK, JOHN M. SALAZAR, R.L. CLEVENGER, DWIGHT BOWER, PHIL MCCULLOUGH, and LOWELL JACKSON,

Petitioners,

v.

YVONNE E. DEFOOR, FRANK BOWEN; MARGIE BOWEN; ELINOR M. BUTENHOFF; URS FREI; MICHAEL HATTON; THE ESTATE OF ANNA HAYES, Deceased; THE CHILDREN AND ESTATE OF ARLENE JOHNSON, Deceased; ESTATE OF JOHN KILLEEN, Deceased; ESTATE OF MARKUS LANG, HERBERT LAND, as survivor, heir and personal representative of Markus Lang, and THE ESTATE OF MARKUS LANG, RITA LAND, as survivor, heir and personal representative of Markus Lang and THE ESTATE OF MARKUS LANG, and ELFRIEDE BORRILLO, as Special Administrator of the Estate of Markus Lang; THE ESTATE OF DOUGLAS MACKENZIE, Deceased; SUZANNE MACKENZIE; MICHAEL MCGARVEY, NANCY MCGARVEY; BERNADINE M. REMMERS; CAROL J. SMITH, THOMAS C. SMITH, and MEAGAN N. SMITH, a minor; THE ESTATE OF GLADYS STEWART, Deceased; THE ESTATE OF SOL STEWART, Deceased; THE CHILDREN AND ESTATE OF KEITH WALTERS, Deceased; THE CHILDREN AND ESTATE OF KATHLEEN WALTERS, Deceased; HOROSHI YOSHIOKA; MORDEKHAY FUMISHIKA; MASHASIKI NAKAYAMA; MIKAYO TAJIMA; and RODNEY ALVA WEST; and CLARENDON NATIONAL INSURANCE COMPANY; SAN JUAN TOURS, INC.,

[*continued*]

d/b/a GRAY LINE TOURS; and all persons or entities suffering, or claiming to suffer, damages resultant from the August 10, 1987, collision between a boulder and a Gray Line Tour Bus on U.S. Highway 40, about seven miles east of Winter Park, Colorado, while the bus was on Berthoud Pass,

Respondents,

and

THE STATE OF COLORADO, by and through the Colorado State Claims Board of the Division of Risk Management,

Plaintiff-Appellee,

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF COLORADO

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QUESTIONS PRESENTED

1. Whether the Colorado Supreme Court's order reversing the trial court's dismissal of claimants' civil rights claims against the individually named public official and employee third party defendants, which implicitly acknowledges the validity of claimants' allegations of constitutional violations arising out of a roadway accident, erroneously elevates an ordinary tort claim into a case of constitutional dimension and is inconsistent with this Court's recent holding in *Collins v. City of Harker Heights, Texas*, ____ U.S. ____, 112 S. Ct. 1061, 117 L.Ed.2d 261 (1992) and other decisions of this Court.

2. Whether the Colorado Supreme Court's decision erroneously holds that the individually named third party defendants are not entitled to qualified immunity as a matter of law.

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OPINION BELOW

The decision of the Colorado Supreme Court has been published at 824 P.2d 783 (Colo. 1992). The Berthoud Pass claimants' petition for rehearing was denied on February 24, 1992.

JURISDICTION

This Court has jurisdiction to entertain this petition for certiorari pursuant to the provisions of 28 U.S.C. §1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves 42 U.S.C. § 1983:

Civil Action for Deprivation of Rights

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

This case involves a roadway accident in Colorado, precipitated when a boulder being moved by third-party defendant Phillip Pacheco, an employee of plaintiff, The State of Colorado, rolled downhill on an upper switchback on the west side of Berthoud Pass and struck a tour bus. Claimants are the

twenty-five individuals injured in the accident and the survivors of the nine individuals killed in the accident. The individual third-party defendants are State Department of Highways employees in the chain of supervision from Mr. Pacheco, the loader operator, to the Department director.

The Colorado Attorney General initiated the litigation by filing an interpleader action in Denver District Court on January 6, 1988. (Vol. I, pp.1-36) The Attorney General attempted to deposit the sum of $400,000 with the registry of the court (Vol. I, pp.37-38) pursuant to the statutory limitation on damages in tort litigation involving public entities pursuant to §24-10-114(1)(b), C.R.S. (1988 Repl. Vol. 10A) which states:

> The maximum amount that may be recovered under this Article in any single occurrence, whether from one or more public entities and public employees, shall be:
>
> * * *
>
> For an injury to two or more persons in any single occurrence, the sum of $400,000; except that, in such instance, no person may recover in excess of $150,000.

Claimants counterclaimed against the State of Colorado and filed a motion for summary judgment contending that §24-10-114(1)(b), C.R.S. violated their right to equal protection of the laws, access to courts, and due process of law. (Vol. I, pp.104-113; Vol. IV, pp.1153-1200) Claimants also filed third-party claims against the individually named defendants, who are officials and employees of the Colorado Department of Highways, generally alleging that they were following the customs and policies of the State of Colorado in their ditch-clearing operations and that "such acts and omissions were grossly negligent, reckless, and showed deliberate indifference to the public safety and human life, including but not limited to that of the defendant counterclaimants and other

members of the traveling public." (*See* amended counterclaims and third-party complaint of Clarendon National Insurance Company, San Juan Tours, Inc., d/b/a Gray Line Tours, and Rodney Alva West, ¶47, Vol. III, pp.786-797) Claimants also contended that the conduct of the individual third-party defendants in carrying out the policies and customs of the State of Colorado violated their constitutional rights and sought redress under 42 U.S.C. §1983.

The individual third-party defendants filed a motion to dismiss claimants' 42 U.S.C. §1983 claims, contending that the factual allegations contained in claimants' counterclaims did not state a claim for relief under 42 U.S.C. §1983. (Vol. IX, pp.2362-2364) The individual third-party defendants also alleged in their motion to dismiss that they were entitled to qualified immunity under *Harlow v. Fitzgerald*, 457 U.S. 800, 102 S. Ct. 2727, 73 L.Ed.2d 396 (1982).

The trial court granted the individual third-party defendants' motion to dismiss claimants' civil rights claims, leaving claimants' state law tort claims pending against the individual third-party defendants.[1] (Vol. X, pp.2526-2534) The trial court also held that the damage limitation contained in §24-10-114(1)(b), C.R.S. was not unconstitutional.

Claimants appealed the trial court's rulings to the Colorado Supreme Court. The Colorado Supreme Court affirmed the trial court's order upholding the constitutionality of §24-10-114(1)(b). However, the Court reversed the trial court's entry of summary judgment with respect to claimants' civil rights claims against the individual third-party defendants. Without articulating any specific rationale, or specific facts allegedly in dispute, the Court held that issues of material fact remained concerning claimants' §1983 allegations. 824 P.2d at 793.

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[1] The trial court certified pursuant to C.R.C.P. 54(b) the dismissed constitutional claims for purposes of appeal.

STATEMENT OF RELATED CASES

There are no related cases.

REASONS FOR GRANTING THE WRIT

A. The Colorado Supreme Court's Order Reversing the Trial Court's Dismissal of Claimants' Civil Rights Claims Against the Individual Public Official and Employee Third Party Defendants, Which Implicitly Acknowledges the Viability of Claimants' Allegations of Constitutional Violations Arising out of a Roadway Accident, Erroneously Elevates an Ordinary Tort Claim Into a Case of Constitutional Dimension and is Inconsistent With This Court's Recent Holding in *Collins v. City of Harker Heights, Texas*, ____ U.S. ____, 112 S. Ct. 1061, 117 L.Ed.2d 261 (1992) and Other Decisions of this Court

42 U.S.C. §1983 may not be construed to augment or replace state tort law even where a public entity or employee may be a tortfeasor. *Daniels v. Williams*, 474 U.S. 327, 106 S. Ct. 662, 88 L.Ed.2d 662 (1986); *Baker v. McCollan*, 443 U.S. 137, 99 S. Ct. 2689, 61 L.Ed.2d 433 (1979); *Paul v. Davis*, 424 U.S. 693, 96 S. Ct. 1155, 47 L.Ed.2d 405 (1976). The analysis necessary to differentiate tortious behavior by a state actor from that involving the deprivation of a federal civil right demands consideration of both the acts challenged and the status or role of the accused tortfeasor. When such an inquiry reveals that only the public employment status of one tortfeasor differentiates that tortfeasor from any other, no justification exists to allow a federal civil rights claim against the public entity or employee. *McCrary v. O'Hare*, 786 F.2d 863 (2nd Cir. 1986); *also see Rankin v. City of Wichita Falls, Texas*, 762 F.2d 444 (5th Cir. 1985). Of particular significance to claimants' allegations against the individual third-

party defendants in this case is the following statement of this Court in *Paul v. Davis, supra*:

> Respondent, however, has pointed to no specific constitutional guarantee safeguarding the interest he asserts has been invaded. Rather, he apparently believes that the Fourteenth Amendment's Due Process Clause should *ex proprio vigore* extend to him a right to be free of injury wherever the State may be characterized as the tortfeasor. But such a reading would make of the Fourteenth Amendment a font of tort law to be superimposed upon whatever system may already be administered by the States. We have noted the 'constitutional shoals' that confront any attempt to derive from congressional civil rights statutes a body of general federal tort law [cite], *a fortiori*, the procedural guarantees of the due process clause cannot be the source for such law.

96 S. Ct. at 1160.

The line of demarcation between tort law and civil rights litigation derives from the obvious Congressional purpose to provide a remedy for the abuse of authority arising under color of state law, in the form of 42 U.S.C. §1983, rather than to occupy the field of tort relief against public entities pursuant to the federal supremacy clause.

The distinction between the two types of cases was recently addressed by this Court in *Collins v. City of Harker Heights, Texas, supra*. There, an employee in the respondent city's sanitation department died of asphyxia after entering a manhole to unstop a sewer line. His widow brought an action under 42 U.S.C. §1983 alleging that her husband had a right under the due process clause to be free from unreasonable risk of harm and to be protected from the city's custom and policy of deliberate indifference toward its employees' safety. She further alleged that the city had violated that right by following a custom and policy of not training its employees about the dangers of working in sewers and not providing

safety equipment and warnings. The district court dismissed the complaint on the ground that it did not allege a constitutional violation. The Fifth Circuit Court of Appeals affirmed on the theory that there had been no "abuse of governmental power" which the court found to be a necessary element of a 42 U.S.C. §1983 claim. This Court rejected the reasoning of the Fifth Circuit, but affirmed its holding. The court did so on the basis that, allegations of "custom and policy of deliberate indifference" notwithstanding, the facts of the case did not give rise to a claim of constitutional proportion; the case presented a simple tort claim. The Court stated:

> We are also not persuaded that the city's alleged failure to train its employees, or to warn them about known risks of harm, was an omission that can properly be characterized as arbitrary, or conscience-shocking, in a constitutional sense. Petitioner's claim is analogous to a fairly typical state law tort claim: The city breached its duty of care to her husband by failing to provide a safe work environment.
>
> Because the due process clause 'does not purport to supplant traditional tort law in laying down rules of conduct to regulate liability for injuries that attend living together in society,' *Daniels v. Williams*, 474 U.S. at 332, we have previously rejected claims that the due process clause should be interpreted to impose federal duties that are analogous to those traditionally imposed by state tort law [cites].

112 S. Ct. at 1070.

The Colorado Supreme Court's decision in this case cannot be reconciled with *Collins v. City of Harker Heights, Texas* or with previous decisions of this Court recognizing the distinction between civil rights claims and ordinary tort actions. Claimants' claims here are analogous to a fairly typical state law tort claim. Claimants contend that, with "deliberate indifference" the individual third-party

defendants followed customs and administered policies of the State of Colorado in:

(a) pushing large rocks, boulders and debris, which are dangerous and lethal to the traveling public, over embankments and slopes, without stopping or warning public traffic lawfully traveling on highways or roadways below;

(b) Requiring maintenance workers to work on projects involving the movement of dangerous and lethal rocks to the traveling public, in the absence of orders or direction from superiors;

(c) Requiring maintenance workers to move dangerous and lethal rocks and boulders without adequate instruction, training, guidance, and supervision;

(d) Requiring or allowing employees of the State of Colorado, the Colorado Department of Highways and/or Colorado Division of Highways to perform ditch-clearing operations and other highway maintenance tasks on mountainous terrain without adequate assistance from co-employees;

(e) Failing to post adequate numbers of flag persons and warning signs so as to stop traffic when ditch-clearing operations are performed on mountainous terrain;

(f) Training, instructing, supervising, and guiding employees of the State of Colorado, the Colorado Department of Highways and/or Colorado Division of Highways to perform ditch-clearing operations in mountainous terrain in a highly dangerous manner in grossly negligent, reckless, and deliberate disregard of the public safety;

(g) Emphasizing excessive work production standards by the State of Colorado, the Colorado Department of Highways and/or Colorado Division of

Highways employees with inadequate regard for the public safety;

(h) Requiring maintenance workers to forego known and relatively simple procedures to break dangerous and potentially lethal rocks into smaller, safer, and more manageable sizes.

(Amended counterclaims and third-party complaint of Clarendon National Insurance Company, San Juan Tours, Inc., d/b/a Gray Line Tours, and Rodney Alva West, ¶ 46). (Vol. III, pp.786-797) These activities challenged by claimants are no different in nature from activities that might be undertaken by various private enterprises. A mining company, logging firm, or private road building contractor could find the ordinary operations of its business generating a claim identical to those involved here. Claimants' allegations reveal that the only distinguishing aspect of this accident, when compared to an ordinary tort, is the involvement of government employees. Alone, this element cannot transform the matter into a 42 U.S.C. §1983 case. As only the employer of these alleged tortfeasors distinguishes this from other tort actions, no cognizable civil rights claim exists. *Daniels v. Williams, supra; Collins v. City of Harker Heights, Texas, supra.*

Moreover, claimants' allegations against the individual third-party defendants confuses the requisite conduct on the part of a *public entity* giving rise to liability under §1983 with allegations which are necessary to give rise to liability under §1983 of an *individual* public official or employee. Claimants' allegations regarding the individual third-party defendants carrying out the "customs and policies" of the State of Colorado would be relevant if they were directed at a municipality. *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 98 S. Ct. 2018, 56 L.Ed.2d 611 (1978) (local governing bodies can be liable under §1983 where the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers, 98 S. Ct. at

2035-2036). Those same allegations directed at these individual third-party defendants are irrelevant. The appropriate inquiry is whether the third-party defendants, with at least deliberate indifference, violated constitutional rights of claimants which were clearly established at the time of the accident. *Daniels v. Williams, supra; Anderson v. Creighton*, 483 U.S. 635, 107 S. Ct. 3034, 97 L.Ed.2d 523 (1987).

Since the allegations contained in claimants' third-party complaint against the individual third-party defendants states no more than an ordinary tort cause of action, the Colorado Supreme Court erred in holding that further factual determinations were necessary with respect to the 42 U.S.C. §1983 claims. However, assuming, *arguendo*, that the third-party complaints did allege a constitutional violation pursuant to §1983, as discussed below, any right claimants may have had, or may now have, under the Constitution were not "clearly established" at the time of this accident and, therefore, the individually named third-party defendants were entitled to qualified immunity as a matter of law.

B. The Colorado Supreme Court's Decision Erroneously Holds That the Individually Named Defendants are not Entitled to Qualified Immunity as a Matter of Law

Pursuing any §1983 civil rights claim for damages against an individual public servant, in the individual capacity of such person, requires that a claimant satisfy the four part test announced in *Anderson v. Creighton, supra*, and overcome the qualified immunity of public officials described in *Harlow v. Fitzgerald, supra.*

The test announced by *Anderson v. Creighton, supra*, allows a civil rights damage remedy against a public servant only once all of the following are shown:

1. The specific conduct of each named individual involved;

2. The alleged constitutional provision(s) implicated;

3. The contours of the constitutional provision(s), as clearly established at the time of the individual employee's behavior; and

4. How the behavior of each individual employee caused the rights violation alleged.

A civil right damages claimant must also convince a court that each named defendant was postured to recognize, as a reasonable person, that the challenged conduct threatened the established constitutional rights of the claimant, prior to any discovery or evidentiary process. No part of the *Anderson* requirements were satisfied by claimants' third-party complaints and, therefore, the Colorado Supreme Court's order of remand was inappropriate.

The third-party complaint allegations do not include any reference to specific conduct by individual State employees sufficient to determine just what each such person did in relation to this suit. At best, the only specific information relates to allegations that one person moved the rock in question. Nowhere else are specific actions or behaviors of individual employees particularized in the fashion demanded by *Anderson v. Creighton*. In the absence of particularized allegations, an adequate claim against an individual under 1983 cannot exist. *Martin v. D.C. Metro. Police Dept.*, 812 F.2d 1425, 1434 (D.C. Cir. 1987). Claimants may not rely on any inference of participation by named individuals in the supervision and control of roadway maintenance policy and procedure. Such reliance constitutes no more than an effort to implicate individuals, in their individual capacities, as a matter of *respondeat superior*, impermissible under § 1983. *Monell v. Dept. of Social Services, supra; Rizzo v. Goode*, 423 U.S. 362, 96 S. Ct. 598, 46 L.Ed.2d 561 (1976).

Claimants' reliance on existing highway department policy and procedure as the basis for these claims also highlights their dependence on factors possessing potential significance only in the analysis of public *entity* liability under § 1983, but

without any relevance to the analysis of public *employee* liability. *See City of Canton, Ohio v. Harris*, 489 U.S. 378, 109 S. Ct. 1197, 103 L.Ed.2d 412 (1989).

The specific constitutional protections invoked by claimants also fail to sustain these claims. The allegations do not indicate that any identified constitutional provision could be implicated by a roadway accident, as those provisions were contoured in August, 1987. Claimants' substantive due process argument advanced in the Colorado Supreme Court is illustrative. No significant debate exists regarding the inability of government to deprive citizens of property without due process, either procedurally or substantively. Nonetheless, claimants can refer the Court to no judicial precedent announced prior to August, 1987, that reflects the implication of due process in any factual setting at all similar to this one. The source of this shortcoming is apparent. No court ever considered a highway accident as possessed of constitutional significance, at least before this case arose. Standing alone, the complete absence of judicial guidance on the issue precludes claimants' effort to link government rock disposal practices to constitutional infringements, at least to the extent such claims are directed at individuals in their individual capacities.[2] Only when the impact of a specific action on a clearly established right is predictable or apparent, can the

---

[2] Claimants never stated what particular highway department policy or procedure they challenge. For purposes of this discussion, claimants appear to be alleging that some State policy or procedure allowed workers to roll boulders down slopes in the course of roadway maintenance. Even proof that such a policy or procedure were in effect could not provide any basis for the assumption that a predictable constitutional consequence existed, however. Absent an historical basis for expecting a constitutional claim, no individual employee could formulate the requisite intent to face § 1983 damages liability. *See Daniels v. Williams, supra*; and *Martinez v. California*, 444 U.S. 277, 285, 100 S. Ct. 553, 559, 62 L.Ed.2d 481 (1980).

immunity granted in *Harlow* to government workers be overcome. *Mitchell v. Forsythe*, 472 U.S. 511, 105 S. Ct. 2806, 86 L.Ed.2d 411 (1985).

Claimants' argument, espoused by Colorado Supreme Court Justice Mullarkey in her special concurrence in part and dissent in part, that their constitutional rights to life, liberty, and freedom of travel were infringed as the result of this accident reflects an incomplete analysis of the issue. For purposes of qualified immunity, the court must inquire not only into the type of harm visited on the claimant, but also upon the specific act of the defendant. This same argument was addressed by this Court in *Anderson v. Creighton* as follows:

> For example, the right to due process of law is quite clearly established by the Due Process Clause, and thus there is a sense in which any action that violates that Clause (no matter how unclear it may be that the particular action is a violation) violates a clearly established right. Much the same could be said of any other constitutional or statutory violation. But if the test of 'clearly established' law were to be applied at this level of generality, it would bear no relationship to the objective legal reasonableness that is the touchstone of *Harlow*. Plaintiffs would be able to convert the rule of qualified immunity that our cases plainly establish into a rule of virtually unqualified liability simply by alleging violation of extremely abstract rights. *Harlow* would be transformed from a guarantee of immunity into a rule of pleading.
>
> It should not be surprising, therefore, that our cases establish that the right the official is alleged to have violated must have been 'clearly established' in a more particularized, and hence, more relevant sense: *The contours of the right must be sufficiently clear that a reasonable official would understand that*

> *what he is doing violates that right.* This is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful [cite], but it is to say that in the light of pre-existing law the unlawfulness must be apparent. (Emphasis added)

107 S. Ct. at 3039.

While claimants' rights to life, liberty and travel were in a generalized sense violated, the individual third-party defendants could not have known that their conduct in conducting ditch clearing operations would violate those rights. The only case factually bearing any resemblance to this action is *Ruge v. City of Bellevue*, 892 F.2d 738 (8th Cir. 1989), in which the Eighth Circuit Court of Appeals held that a municipality could be held liable under §1983 for having a deliberate policy of not shoring up ditches and then requiring employees to work in them without warning of the dangers. However, *Ruge* is a case involving a public entity defendant, not an individual employee of the entity. *Ruge* was announced after the accident occurred in this case. Moreover, *Ruge* has been explicitly criticized by the Eighth Circuit Court of Appeals, *Dawson v. Milwaukee Housing Authority*, 930 F.2d 1283, 1285-1286 (7th Cir. 1991), and implicitly rejected by this Court in *Collins v. City of Harker Heights, Texas, supra*, by its holding that similar conduct did not implicate 42 U.S.C. § 1983. Therefore, it would have been impossible for defendants to have known that their conduct in ditch clearing operations could violate a clearly established constitutional right.

This Court held in *Mitchell v. Forsythe, supra*, that qualified immunity is an entitlement not to stand trial under certain circumstances and that even such pretrial matters as discovery are to be avoided if possible. *Also see Anderson v. Creighton, supra; Harlow v. Fitzgerald, supra.* This Court also noted in *Anderson v. Creighton, supra*, that one of the purposes of the *Harlow* qualified immunity standard is to protect public officials from the broad ranging discovery that can be

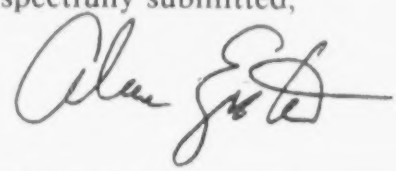
peculiarly disruptive of effective government. For this reason, this Court has emphasized that qualified immunity questions should be resolved at the earliest possible stage of a litigation. *Anderson v. Creighton*, 107 S. Ct. at 3042, n.6. Since the allegations contained in claimants' third-party complaints do not, as a matter of law, overcome the individual third-party defendants' qualified immunity defense, the Colorado Supreme Court erred in remanding the matter for further hearings in this regard.

CONCLUSION

This case presents a unique and long awaited opportunity for this Court to define where the actions of public employees depart from traditional tort theory and enter the field of 42 U.S.C. § 1983. The Colorado Supreme Court suggests that this is to be measured by the degree of fault alleged against the public employee who has admittedly injured the claimant. If this is the test, then every act resulting in injury becomes, through artful pleading, a recognized claim under § 1983. *Harker Heights* and *Anderson v. Creighton* leave no doubt that this is not the test. Although the "abuse of governmental power" test utilized by the Fifth Circuit was explicitly rejected by this Court in *Harker Heights*, no clearly defined alternative was articulated in its place. Rather, the Court held that "[p]etitioner's claim is analogous to a fairly typical state law tort claim . . . " 112 S. Ct. at 1070. Clearly it is, but why? Until guidance is provided by this Court "fairly typical state law tort claims" such as claimants' here will continue to be misconstrued as torts of Constitutional proportion.

Dated this 20th day of May, 1992.

Respectfully submitted,



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CERTIFICATE OF MAILING

I hereby certify that on this 20th day of May, 1992 a true and correct copy of the foregoing *PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF COLORADO* was mailed by placing the same in the United States Mail, postage prepaid, addressed as follows:

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